IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7900 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANASKANTHA DISTRICT CO-OP. UNION - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioner(s) : 1,
MS. ARCHANA RAVAL, AGP. for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3, 5,
MR DILIP B RANA for Respondent(s) : 4,
MR SAURABH G AMIN for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 13/03/2007

ORAL JUDGMENT

1 This petition has been filed praying for following reliefs :

> *"7. The petitioner therefore prays that :-*
>
> *A) That this Honourable Court will be pleased to issue appropriate writ, order or direction in the nature of mandamus or certiorari or any other appropriate writ, order or direction to quash and set aside the impugned judgment and order at Annexure-H to the petition passed by respondent no.1 herein;*
>
> *B) That this Honourable Court will be pleased to stay the further operation of the impugned order at Annexure-H till and pending hearing and final disposal of this petition;*
>
> *C) That this Honourable Court will be pleased to restrain respondent No. 4 from collecting any contribution to the education funds from the societies declaring dividend above 3% within the area of Radhanpur and Santalpur talukas on behalf of respondent No.5 society till and pending hearing and final disposal of this petition;*
>
> *D) That this Hon'ble Court will be pleased to pass such other and further order as the nature and circumstances of the case may require."*

2 The petitioner is a district level Federal Co-operative Society. Two talukas viz., Radhanpur and Santalpur of Banaskantha district were carved out by the State Government and transferred to the newly formed Patan district. Similarly three talukas of Mehsana

district also came to be carved out and transferred to the newly formed Patan district.

3 It appears that vide order dated 17.10.1998 the District Registrar, Mehsana, who was at the relevant point of time having charge over the newly formed Patan district, granted registration to respondent No.4 herein, Patan District Co-operative Union, a federal society for Patan district. Against the said order of granting registration, the Registrar, Co-operative Societies, Gujarat, initiated *suo motu* revisional proceedings u/S. 155 of the Gujarat Co-Operative Societies Act, 1961 (the Act) and cancelled the order of registration after hearing respondent No.4 – Union as well as District Registrar, Mehsana.

4 Against said order dated 25.11.2000 made by the Registrar, respondent No.4 preferred Revision before the State being Revision Application No. 27 of 2005. The said Revision came to be granted vide impugned order dated 19.9.2005 whereunder the order granting registration made on 17.10.1998 came to be restored and the order made by the Registrar on 25.11.2000 was set aside. To complete the chain of events it may be noted that

before the Revision was filed the petitioner had approached this Court and was asked to go before the authority and hence the Revision.

5 Learned Advocate for the petitioner has made a grievance that the impugned order by the State Government has been made without hearing the petitioner though the petitioner had been objecting to the registration of respondent No.4- Union. It was further submitted that the petitioner had vide communication dated 23.3.1999 objected to formation of respondent No.4 – Union and the objection was raised before respondent No.5, the State level union. This was followed by resolution dated 27.6.2000 as well as communication dated 29.4.2000 addressed to respondent No.5 – State union. Thereupon, State Union vide communication dated 7.7.2000 moved the Registrar, Co-operative Societies which resulted in suo motu revisional action and order dated 25.11.2000. Therefore, according to the petitioner, once the petitioner was a party who was affected the State Government was bound to grant an opportunity of hearing to the petitioner before passing any order.

Learned Advocate also placed reliance on Provisions of Sections 17 and 17A of the Act to contend that the State Government was in the process of formulating a policy in relation to transfer of assets and liabilities of various existing societies upon formation of a new district and the District Registrar, Mehsana could not have passed an order of registration dated 17.10.1998.

6 Heard the learned Advocate appearing for respondent No.4 – Union and respondent No.5 – State Union as well as learned Assistant Government Pleader. Learned Advocate for respondent No.5 – State Union has supported the stand of the petitioner while the learned Assistant Government Pleader has supported the order made by the State Government and stated that the registration granted to respondent No. 4 – Union is in accordance with the provisions of law and no interference was called for.

7 The learned Advocate for the petitioner accepted the fact that at no stage the petitioner had called upon the authority to exercise powers u/s.17A of the Act. The reliance on communication dated 8.9.1998 from the Registrar to the District Registrar, Mehsana cannot carry the case of the petitioner any further because the said

communication, in the first instance, is not available on record. Secondly, as can be seen from order dated 25.11.2000 made by Registrar all that is stated is that District Registrar, Mehsana had been directed vide the said communication to bifurcate/divide the Mehsana District Co-operative Union before granting registration to respondent No.4 – Union. There is no statement in order dated 25.11.2000 made by the Registrar to the effect that District Registrar, Mehsana had been directed not to grant registration to respondent No.4 – Union.

8 Considering the facts of the case, it is apparent that in a case where a new revenue district comes into existence by virtue of a decision taken by the State Government, upon consequential formation of district level Co-operative Society various primary Co-operative Societies at the taluka level and village level of the talukas which were forming part of another district earlier in point of time, and have subsequently become part of the newly formed district, are bound to be affected and the existing district level union or State level union cannot be heard to state that such Co-operative Societies which were members of the existing district level union should not be permitted to join the district level union

of the newly formed district. Once, geographically, talukas in question are carved out by the State Government and declared to be part of the newly formed district, as a natural corollary the societies falling within such areas are bound to be aligned with the taluka level societies who in turn would get aligned with the newly formed district level union upon formation of the new district. If such newly formed district level Co-operative Union seeks registration and satisfies the requisite condition prescribed by law, it is not open to the existing district level union to object to the same as even otherwise such district level union has no right as such to insist that a particular Co-operative Society must become its member, more particularly when the taluka or village in which such society exists is forming part of the newly formed district and has been carved out from the existing district.

9 In the aforesaid circumstances, the petition does not merit acceptance and is accordingly rejected. Rule discharged. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J)

m.m.bhatt